

# IOWA DEPARTMENT OF NATURAL RESOURCES

## ADMINISTRATIVE ORDER

<b>IN THE MATTER OF:</b>  <b>NAZARETH EVANGELICAL LUTHERAN CHURCH</b>  Cedar Falls, Iowa Wastewater Facility No. 6-0709801	<b>ADMINISTRATIVE ORDER</b>  <b>NO. 2012-WW- 11</b>
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**TO: Sally Young, Administrator**  
**Nazareth Evangelical Lutheran Church**  
**7401 University Avenue**  
**Cedar Falls, Iowa 50613**

### I. SUMMARY

This administrative order (order) is issued to the Nazareth Evangelical Lutheran Church, also known as the Nazareth Lutheran Church (Church), due to failure to timely apply to renew an NPDES permit. The order assesses an administrative penalty in the amount of \$1,500.00.

Any questions regarding this order should be directed to:

**Relating to technical requirements:**

Steve Williams, Environmental Specialist  
NPDES Section  
Iowa Department of Natural Resources  
502 East 9<sup>th</sup> Street  
Des Moines, Iowa 50319-0034  
Ph: (515) 281-8884

**Relating to legal requirements:**

Diana Hansen  
Attorney at Law  
Iowa Department of Natural Resources  
502 East 9<sup>th</sup> Street  
Des Moines, Iowa 50319-0034  
Ph: (515) 281-6267

**Mail payment of penalty to:**

Iowa Department of Natural Resources  
502 East 9<sup>th</sup> Street  
Des Moines, Iowa 50319-0034

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**II. JURISDICTION**

This order is issued pursuant to Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1, and the rules promulgated or permits issued pursuant thereto, and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

**III. STATEMENT OF FACTS**

1. The Church is located at 7401 University Avenue, Cedar Falls, Iowa 50613. The legal description for the Church is Section 24, T89N, R14 W, Black Hawk County, Iowa. The Church building complex has a heating and cooling system that has chillers and heat pumps. The NPDES permit issued to the Church authorizes the discharge of non-contact cooling water used in the heating and cooling systems through five designated outfalls into a storm sewer that discharges into Dry Run Creek. This disposal system is operated pursuant to NPDES Permit No. 6-0709801. This permit expired on February 25, 2012.

2. The renewal application for the NPDES permit was required to be filed by 180 days prior to expiration of the NPDES permit or by August 29, 2012. This was a condition of the recently expired NPDES permit and a requirement under Department rules. The Department sent a renewal application form to the permit holder on April 26, 2011. On May 10, 2011, the Church was contacted by telephone concerning submittal of the renewal application. On November 1, 2011, a notice of violation (NOV) letter was sent for failure to submit the completed renewal application timely. The Department has not received a complete permit renewal application to date.

**IV. CONCLUSIONS OF LAW**

1. Iowa Code section 455B.186 prohibits the discharge of pollutants to waters of the state without or contrary to a permit from the Department. Iowa Code section 455B.183 prohibits the construction or operation of disposal systems without or contrary to written permits from this Department. Iowa Code section 455B.174 authorizes the Director to issue permits for the operation of a disposal system.

Iowa Code section 455B.171(5) defines "disposal system". Disposal system is defined as "a system for disposing of sewage, industrial waste, or other wastes, or for the use or disposal of sewage sludge." The term "includes sewer systems, treatment works, point sources, dispersal systems, and any systems designed for the usage or disposal of sewage sludge." The discharge of non-contact cooling water from the Church's heating and cooling systems would fall within the definition of a disposal system.

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2. Iowa Code section 455B.173 authorizes and requires the Environmental Protection Commission (Commission) to promulgate rules relating to the operation of disposal systems and discharge of pollutants into waters of the state. The Commission has done so at 567 IAC chapters 60—69. Subrule 62.1(1) prohibits the discharge of pollutants to waters of the state unless authorized by a permit from this Department. Subrule 64.3(1) prohibits the operation of a wastewater disposal system unless authorized by a permit from this Department and prohibits operation of any wastewater disposal system contrary to any condition of a permit.

3. Department subrule 567 IAC 64.8(1) states that “[a]ny state NPDES permittee who wishes to continue to discharge after the expiration date of the permit shall file an application for reissuance of the permit at least 180 days prior to the expiration of the permit.” The facts stated above demonstrate noncompliance with this provision.

4. The terms of this facility’s NPDES permit and the Department subrule required submission of an application for NPDES permit renewal to the Department no later than August 29, 2011. The Department has not received a complete NPDES permit renewal application for this facility to date.

**V. ORDER**

THEREFORE, the Department orders the Church to comply with the following provisions in order to resolve this matter:

1. You are required to submit a complete application for renewal of the NPDES permit within 60 days of receipt of this order or in the alternative, submit a plan for the elimination of the discharges from this disposal system within 60 days of receipt of this order. The plan is required to include a proposed schedule for elimination of the discharges and result in elimination of the discharges.

2. You are assessed and required to pay an administrative penalty of \$1,500.00. The administrative penalty is due within sixty days after receipt of this order.

**VI. PENALTY**

Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision. Iowa Code section 455B.109 authorizes the Commission to establish a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order with an administrative penalty of \$1,500.00.

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a. **Economic Benefit.** The facility owner has saved money by not allocating time and resources to the submission of the NPDES permit renewal application. Since a complete renewal application has not been received to date, the amount of \$500.00 is assessed for this factor.

b. **Gravity of the Violation.** Maintaining compliance with water pollution control laws is a major program priority of the federal and state pollution control agencies. Failure to timely submit a renewal application for an NPDES permit and operation of a wastewater disposal system without an NPDES permit are serious violations. The amount of \$500.00 is assessed for this factor.

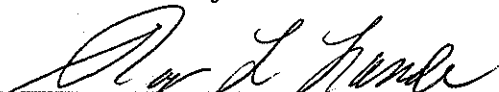
c. **Culpability.** The Department sent a renewal application and a notice of violation letter to this facility advising it of its duty to timely submit its renewal application. The facility was also contacted by telephone concerning submittal of the renewal application. Failure to submit the renewal application challenges the authority of the Department and the integrity of the wastewater program. The amount of \$500.00 is assessed for this factor.

**VII. APPEAL RIGHTS**

Pursuant to Iowa Code section 455B.175(1), and 561 IAC 7.4(1), as adopted by reference by 567 IAC chapter 7, a written notice of appeal to the Commission may be filed within 30 days of receipt of this order. The notice of appeal should be filed with the Director of the Department, and must identify the specific portion or portions of this order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC chapter 7.

**VIII. NONCOMPLIANCE**

Compliance with section "V. Order" constitutes full satisfaction of all requirements pertaining to the violations described in this order. Failure to comply with this order may result in the imposition of further administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties under Iowa Code section 455B.191.

  
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ROGER L. LANDE

DIRECTOR

IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 8th day of

April, 2012

Nazareth Evangelical Lutheran Church- NPDES Permit No. 6-0709801 (Central Office Records File), Steve Williams- NPDES Section, Field Office No. 1, Diana Hansen-Legal Services, EPA Region VII, I.B.1.